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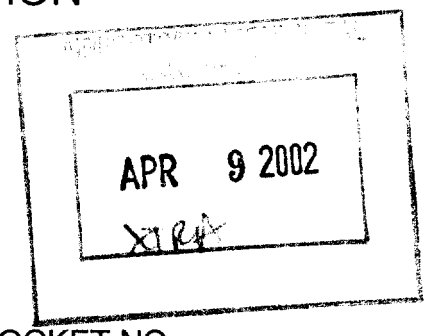
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591



SKYDANCE HELICOPTERS, INC.,

COMPLAINANT,

vs.

SEDONA-OAK CREEK AIRPORT AUTHORITY

AND

YAVAPAI COUNTY, ARIZONA,

RESPONDENTS.

DOCKET NO.

FAA-02-13068-3

PART 16 COMPLAINT

COMMUNICATIONS WITH RESPECT
THIS DOCUMENT SHOULD BE SENT TO:

Marshall S. Filler
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FILLER & WELLER, PC
117 North Henry Street
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(703) 299 0784
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msf@fillerweller.com
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Dated: April 9, 2002

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PART 16 COMPLAINT

Pursuant to §16.23 of the Federal Aviation Administration's ("FAA") Rules of Practice for Federally-Assisted Airport Enforcement Proceedings ("Rules") Complainant Skydance Operations, Inc. *d/b/a* Skydance Helicopters ("Skydance"), through counsel, hereby files its complaint against the Sedona-Oak Creek Airport Authority and Yavapai County, Arizona for violations of 49 USC § 47107(a) by virtue of their failure to comply with grant assurances made as a condition of receipt of federal funds for improvements to the Sedona-Oak Creek Airport.[1] Skydance further certifies, as required by §16.21 of the Rules, that it

[1] On March 6, 2002, Skydance filed a Part 16 complaint solely against the Airport Authority. This complaint was assigned FAA Docket No. 16-02-02. This filing consisted of the complaint and supporting exhibits numbered 1-31. On April 1, 2002, counsel for respondent received an

has made numerous substantial and reasonable good faith efforts to resolve this matter including seeking informal resolution through the cognizant FAA office. As will be shown, Skydance believes there is no reasonable prospect of informal resolution of this matter. Therefore, Skydance files this complaint seeking an order finding the Sedona-Oak Creek Airport Authority and Yavapai County in violation of 49 USC § 47107(a) and their grant assurances and requiring that they cease and desist from such violations.

I. FACTUAL BACKGROUND

A. Sedona Airport Administration

The Sedona-Oak Creek Airport (the "Airport") is owned by the County of Yavapai, Arizona (the "County"). Exhibit 1. The County's address is Board of Supervisors, Yavapai County, 1015 Fair Street, Prescott, AZ 86305.

Some years ago, the County leased the Airport for administrative purposes to a non-profit corporation. Exhibit 1. This corporation, the Sedona-Oak Creek Airport Authority is now known as the Sedona Airport Administration ("SAA"), with its address at 235 Air Terminal Drive, Suite 1, Sedona, AZ 86336. It leases the Airport from the County for a nominal amount per year. In effect, the County has delegated its responsibilities for administration and operation of the Airport to SAA.

SAA is controlled by an appointed Board of Directors ("Board") who are usually persons who are non-commercial users of the Airport with aircraft based at the Airport. Exhibit 1. Board members are elected by existing Board members so the Board is self-perpetuating. There is limited input from the County Board of Supervisors on Board membership and none from its electorate. Exhibit 1. As far as Skydance is aware, no commercial user of the Airport has ever been a

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undated document from the FAA dismissing the complaint without prejudice because Yavapai County had not been named and served. In accordance with the instructions in this document, only the County is being served with a copy of the exhibits. References in this complaint to exhibit numbers refer to the exhibits filed with the original complaint.

member of the Board. The day-to-day operation of the Airport is run by a paid staff member of SAA who functions as airport manager and who answers only to the Board.

B. Skydance's Operations at the Airport

Skydance began its operations at the Airport on March 1, 1994. At that time it leased an office and a helicopter landing pad. Exhibit 2. Shortly after moving in, Skydance made safety improvements, at its own expense, to the helipad area. Exhibit 3. Skydance Operations, Inc. *d/b/a* Skydance Helicopters holds an air carrier certificate issued under Part 119 of the Federal Aviation Regulations ("FAR") and operations specifications authorizing operations under the rules in Part 135 of the FAR. Skydance provides helicopter tours of the area around Sedona, one of the most scenic in the United States, as well as transportation to a remote Native American village.

C. Disputes Between Skydance, Another Tenant, and SAA

Until the current dispute, there have been two only disagreements between SAA and Skydance. The first centers around the relations between Skydance and another air tour operator, Red Rock Biplanes ("Biplanes"), which shared sales and office space in a commercial building at the Airport. Employees of Biplanes repeatedly harassed Skydance customers and employees. Indeed, Biplanes' employees on more than one occasion verbally or physically assaulted Skydance employees. In addition, Biplanes often conducted its operations in an unsafe manner. However, when Skydance complained to SAA about these activities, its complaints were ignored.

The second dispute involved a change in SAA's charges for commercial tenants on the Airport. Under a new commercial use fee schedule, Skydance would have paid $1,000 per month while some larger operators paid less. Skydance and several other commercial tenants believed that the new fee schedule was excessive and discriminatory. While this dispute was pending,

Skydance signed a new lease for its facilities under protest. Exhibit 4. Eventually, when the FAA agreed to examine the fairness of the new fee schedule, SAA relented and amended its fee structure to provide for a charge based upon a percentage of an operator's gross revenue at the Airport. Exhibit 5. As this arrangement was acceptable to Skydance, it agreed to an amendment to its existing lease incorporating this charge and, at the same time, exercised its option to extend the lease for an additional two years. After this extension, Skydance's lease was due to expire on March 31, 2001. Exhibit 6.

Biplanes' operations adjacent to Skydance continued to create friction. Following an incident during which an enraged Biplanes' employee threw objects at a landing Skydance helicopter (apparently because of dust blown into the Biplanes' hangar by the rotors), Skydance and SAA reached an agreement to move Skydance operations away from Biplanes. Skydance was authorized to proceed with plans to construct its own office and hangar building on the Airport. SAA agreed to make needed improvements to any Airport roads for access to this proposed building. In addition, SAA agreed that Skydance would be given a 30-year lease on this facility and that Skydance would be allowed to remain at its current location until its new facility was complete. Exhibit 7. SAA's agreement to allow a 30-year lease of the new facility was crucial to Skydance as the initial estimates for construction of its new facility totaled nearly $300,000. Exhibit 8. Only its ability to amortize such a substantial capital investment over a long period of time made such a large investment sensible for Skydance. At this point, Skydance believed it had finally achieved a viable long-term plan for its operations on the Airport.

D. The Current Dispute

On January 23, 2001, Skydance submitted a diagram of its proposed hangar to the SAA. Exhibit 9. Skydance anticipated no difficulty in negotiating a lease for this facility because several new hangars were already being constructed by members of the SAA Board on property adjacent to the existing

Skydance site. SAA granted 30-year leases for these hangars at favorable terms (although they were not going to be used for commercial activities). As Skydance was eager to begin construction of its own hangar, it urged the SAA to provide a lease as soon as possible. Exhibit 9.

On February 10, 2001, SAA finally provided Skydance with a draft copy of a 30-year ground lease for the new hangar. However, its cover letter also mentioned, for the very first time, a requirement for a "commercial business operations license." Such a license would be issued only for two-year terms and would be renewable "subject to business conditions." While the license was mentioned in the February 10 letter from the SAA, a copy of such a license was not included. Exhibit 10. On February 12, 2001, Skydance acknowledged receipt of the draft lease and requested a copy of the proposed business license. Exhibit 11. Then, on March 5, 2001, Skydance again wrote to SAA expressing frustration with the delay in completing arrangements for the new hangar and again asking for a draft copy of the proposed business license. Exhibit 12. Finally, because Skydance's existing lease was near its expiration, SAA notified Skydance on March 28, 2001 that the lease would be continued on a month-to-month basis. Exhibit 13. The next day Skydance replied by noting that SAA had already agreed (Exhibit 7) in writing that Skydance's existing leases would remain in effect until completion of the new hangar. Exhibit 14. At the time, Skydance was relying on the good faith of the SAA and did not believe that its month-to-month notification was a material change to this prior agreement. Id.

Finally, on April 11, 2001, Skydance received a draft copy of the proposed license agreement. Exhibit 15. Until this time, Skydance had not been opposed to a requirement of a license in addition to a ground lease for its hangar property. Indeed, it had been relying upon the good faith of the SAA in drafting such a license. A review of the proposed license quickly revealed that such reliance had been misplaced. Several provisions of the document were oppressive and unacceptable.

E. The Unacceptable License Agreement

First, Paragraph 3 of the license, entitled Grant of License, provided that the license could be terminated by SAA upon any breach of a provision of the lease determined *in the sole discretion of SAA.* Indeed, SAA was authorized to revoke the license "***with or without cause***" and any such action by SAA was deemed to be binding upon Skydance. **Further, all rights to appeal or contest such a determination were waived.** Upon such a determination by SAA, Skydance would be required to vacate its premises (the 30-year lease notwithstanding) within seven days. In short, Skydance's 30-year lease could be reduced to a mere seven days at the whim of the SAA and Skydance would have no right to challenge this action, no matter how arbitrary.

Paragraph 4 of the proposed license further required that Skydance refrain from any action that might be "objectionable" to SAA or to any Airport patron. However, nowhere is there any method of determining just what might be "objectionable." Paragraph 6 of the draft license provided that any extension of the license for subsequent two-year terms would be subject to an increase in fees and costs to be determined by SAA "*at its sole discretion and determination.*" Finally, Paragraph 7.4.5 relieved the SAA of all liability for negligence.

Just after receiving the draft license, Skydance was contacted by an SAA safety consultant, Mr. Bieber. Skydance asked Bieber if all commercial operators would be required to sign such a license. The next day Bieber advised Skydance that only commercial operators wanting to construct their own hangars would be required to sign. (*i.e.*, only Skydance and Biplanes). Indeed, a statement by the Airport manager, Mac McCall, that was overheard by a Skydance employee indicates that McCall intended to require the license only of Skydance and Biplanes in order to give him more control over their operations. Exhibit 16.

Skydance requested that its counsel review the proposed lease and license documents. On July 6, 2001, counsel for Skydance wrote to Mr. McCall to advise him that the proposed lease was substantially acceptable, subject only to certain minor changes. He also noted that Skydance was willing to accept a license agreement that was fair, reasonable, and applicable to all commercial operators at the Airport. However, he then pointed out that the proposed agreement was simply unacceptable and contrary to law. Exhibit 17. SAA replied that it was now unable to enter into a long-term lease with Skydance because its lease with the County would end in May, 2031. Exhibit 18. Counsel for Skydance responded on August 8 with a detailed explanation of Skydance's position regarding the proposed lease (substantially acceptable) and the proposed license (unacceptable in its current form). This letter also detailed the legal basis for Skydance's position and placed SAA on notice that Skydance intended to file a Part 16 complaint if SAA continued to deal in bad faith. Exhibit 19. On August 17, counsel for Skydance provided to SAA a revised draft of the proposed license agreement in an effort to move negotiations along. Exhibit 20. Another proposed revision (substantially similar) was sent on August 20. Exhibit 21.

On August 20, 2001, counsel for SAA replied that Skydance's proposed changes were unacceptable. Exhibit 22. The tone of this letter gave the clear impression that SAA did not intend to negotiate issues concerning the license in good faith. On August 23, 2001, counsel for Skydance replied to this letter, repeating the legal and equitable justification for Skydance's position and soliciting the assistance of the SAA and its counsel in resolving the matter. However, SAA was also advised that Skydance intended to seek mediation from Mr. Tony Garcia of the FAA. Exhibit 23. A letter was sent to Mr. Garcia that same day. Exhibit 24.

When he received Skydance's letter, Mr. Garcia requested certain information from SAA in a letter dated September 7, 2001. Exhibit 25. SAA

apparently sent Mr. Garcia some information in response to this request, although Skydance did not receive copies at the time. After reviewing SAA's response to his first request, on October 17, 2001, Mr. Garcia requested additional information about the licensing process at the Airport. Exhibit 26. Meanwhile, SAA and Skydance continued to exchange correspondence concerning the issues. While SAA made some concessions concerning the language of Paragraph 3, its proposal was still unreasonable. In addition, it was unwilling to modify the other objectionable portions of the license document. Indeed, while purporting to negotiate in good faith, SAA also threatened to terminate Skydance's existing lease and evict it from the Airport. This threat was not carried out until later.

On October 26, 2001, Mr. Garcia wrote to Skydance with a determination that the proposed license agreement did not violate the Airport's grant assurances. Exhibit 27. Naturally, Skydance was shocked. This result was especially disconcerting because Mr. Garcia did not solicit Skydance's views on any information he received from SAA. Thus, his investigation was necessarily one-sided. On October 31, 2001, counsel for Skydance wrote to Mr. Garcia pointing out that much of the information he had relied upon in his letter was untrue. Exhibit 28. This letter also pointed out that, emboldened by his letter, SAA had presented an ultimatum to Skydance: Sign the license agreement or vacate its premises by November 12, 2001. Exhibit 29.

Despite the letter from Skydance's counsel pointing out errors in the facts he relied upon, Mr. Garcia indicated that he considered the matter closed. However, he did agree to send copies of all the documents he had relied upon in reaching his decision. When Skydance received these copies on November 12, 2001, it realized that much of the information submitted to Mr. Garcia by SAA was slanted, immaterial, or simply untrue. However, before it could take any further action, Skydance was locked out of its offices on November 13, 2001. Exhibit 30.

F. Skydance's Efforts to Obtain Relief

In the face of this draconian action, Skydance wanted to resume its business at the Airport as soon as possible. Because a Part 16 complaint would take some time, counsel for Skydance advised seeking a restraining order against SAA in the local courts. Thus, Skydance's immediate actions to force SAA to permit it to resume operations concentrated on this alternative. When this action was delayed by procedural issues, Skydance realized that immediate relief from the SAA action would not be possible. For this reason, Skydance was forced to lay off its employees at the Airport and relocate its helicopters to other locations. Naturally, this relocation consumed most of Skydance's immediate attention for the remaining weeks of 2001.

In January 2002, Skydance retained this firm to prepare and file a Part 16 complaint. Preparation of this complaint and the supporting materials has proceeded diligently since that time.

II. The Airport's Grant Assurances.

In the course of its history, the Airport , through its sponsor the County, has received federal funds under the Airport and Airway Improvement Act of 1982. Specifically, the Airport has received at least 11 grants of federal funds since 1982. Exhibit 31. Thus, the County and SAA are required to comply with all the standard grant assurances that are part of the airport grant program. Indeed, the SAA model ground lease that was presented for signature by Skydance (Exhibit 9) provides in Paragraph 19 that the lease is subordinate to *inter alia* "airport grant assurances contained in agreements with the FAA and airport compliance requirements issued by the FAA."

In particular, Assurance No. 22 prohibits economic discrimination at an airport which has received federal funds. Two of the specific sub-assurances in this area are pertinent to the actions of SAA. First, Assurance 22a requires an airport sponsor to:

> make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical use.

Thus, the first question which must be examined is if the terms proposed by SAA in the license agreement were fair and reasonable.

In addition to a duty to impose only conditions that are fair and reasonable, this assurance also imposes an obligation to ensure maximum utility to the public from the airport by making available leased space on the airport to those willing and able to provide flight services to the public. FAA Order 5190.6A, Airports Compliance Handbook ("Compliance Handbook"), Chapter 4, Paragraph 4-11. Paragraph 4-15(c) of the Handbook explains this duty with respect to activities offering services to the public.

> If adequate space is available on the airport, and if the airport owner is not providing the service, **it is obligated to negotiate on reasonable terms** for the lease of space needed by those activities offering flight services to the public, or support services to other flight operators, to the extent there may be a public need for such services. A willingness by the tenant to lease the space and invest in the facilities required by reasonable standards shall be construed as establishing the need of the public for the services proposed to be offered.
>
> [Emphasis supplied]

In addition, Assurance 22e requires (in pertinent part) that each air carrier using an airport:

> shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such carriers which make similar use of such airport and utilize similar facilities . . . .

For the purpose of satisfying this grant assurance, SAA must have required all air carriers using similar facilities at the Airport to submit to the same licensing requirements that it sought to impose on Skydance. Skydance believes that the

facts of this matter, as set forth above, show that the County and SAA did not comply with either of these assurances.

III. Noncompliance with Grant Assurances.

Even a cursory examination of the license agreement proposed by SAA shows that it was far from fair and reasonable. Exhibit 15. Its most egregious defect is the power granted to SAA in Paragraph 3 to deem a licensee in default in its own sole discretion and without any ability of the licensee to cure the default. Indeed, this paragraph gives SAA the power to declare a licensee in default "with or without fault." Once the SAA makes this determination, no matter how arbitrary or unfounded, a licensee must vacate it premises within seven days.

For a tenant like Skydance, this provision is clearly unfair and unreasonable. SAA encouraged Skydance to undertake to build its own hangar and office facilities at considerable expense to Skydance. As an inducement to Skydance to make such a substantial investment at the Airport, SAA offered to grant Skydance a 30-year lease for such property. Although Skydance subsequently agreed to a minor shortening of this period to correspond to the underlying lease from the County, it is clear that such a long-term commitment was essential to any agreement between SAA and Skydance.

However, what the SAA promised in the lease it took away in the proposed license. First, no license would run for more than two years. Thus, every two years Skydance faced the prospect of losing its ability to conduct business from its Airport facility even if the lease continued. However, the even more draconian provisions of Paragraph 3 subjected Skydance to an even greater risk. At the whim of the SAA, Skydance could be declared in default "with or without cause" and summarily evicted from its leasehold within seven days no matter how long the underlying lease had to run.

Finally, as if this were not enough, SAA insisted that Skydance waive all rights to appeal or contest its actions in any forum whatsoever (including apparently with SAA itself). In short, SAA appointed itself prosecutor, judge, jury, and executioner. No one can suggest that such a requirement is either fair or reasonable.

In fact, if such a requirement were imposed by the County as a governmental agency rather than through SAA as a non-profit corporation, it might very well be unconstitutional. It seems clear that Skydance would have had some form of property rights in both the leasehold agreement on its hangar as well as the license to conduct commercial operations at the Airport. As such, any governmental action to deprive Skydance of such property rights would be subject to *some* form of due process requirement, no matter how attenuated. Paragraph 3, however, provides no due process whatsoever.

Other provisions of the proposed license agreement are nearly as unfair and unreasonable. Paragraph 4 proscribes any conduct by a licensee that may be "objectionable" to either SAA or any Airport customer. However, there is no clue given as to what might be deemed objectionable or who might make that judgment. Once again, this is hardly fair and reasonable.

Paragraph 6 empowers SAA to determine fees and costs upon renewal of a license "at its sole discretion and determination." However, the document is devoid of any method by which SAA will make such a determination. Thus, SAA could, if it wished, simply price a licensee out of the Airport. This is clearly neither fair nor reasonable.

Finally, Paragraph 7.4.5 waives any claims against SAA or its employees even for negligent acts. In general, the law does not favor such disclaimers of liability for negligence, especially when one party (SAA) has a superior bargaining position. Once more, SAA tried to impose terms that were neither fair

nor reasonable. Because of its attempt to impose such terms in its license agreement, the County and SAA are in violation of Grant Assurance 22a.

In addition, it is abundantly clear from the exhibits that SAA did not negotiate in good faith with Skydance over the terms of its ground lease and, in particular, the license. It engaged in delay and bullying throughout its negotiations, often threatening Skydance with termination of its existing lease. Then, after Mr. Garcia's ruling, it simply cut off negotiations and locked Skydance out of its facility. This failure to negotiate in good faith also constitutes a breach of Grant Assurance 22a.

Finally, the terms in the license agreement are so unfair and unreasonable that it would be a violation of SAA's grant assurances even if they were imposed on all commercial operators at the Airport. However, Skydance believes that not all commercial operators at the Airport have, in fact, been required to sign the same license agreement presented to Skydance. It understands that at least one Part 135 operator still doing business at the Airport has not even been asked to sign the license. The FAA should require more than mere assurances from SAA that all have signed. If, as Skydance believes, some have not, the County and SAA are also in violation of Assurance 22e.

IV. Skydance Has Complied with §16.21 of the Rules.

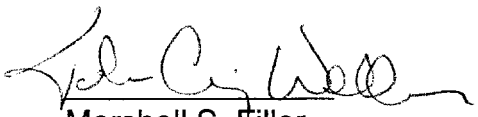
§16.21 of the Rules requires that before filing a complaint, a party must have made good faith efforts to resolve the matter informally. The factual narrative above shows that Skydance went far beyond reasonable efforts to resolve this matter, only to be thwarted at every turn by SAA's intransigent attitude. In fact, Skydance twice put SAA on notice that it might file a complaint if SAA did not negotiate in good faith. Skydance also sought the intervention of the FAA to resolve this matter. Unfortunately, the FAA's representative did not solicit Skydance's side of the story before reaching a conclusion. In any event, Skydance has made more than substantial and reasonable good faith efforts to

resolve this matter informally. Moreover, SAA's summary eviction of Skydance from its existing facility at the Airport makes it crystal clear that no informal resolution of this matter is possible.

V. Conclusion.

Based upon the facts and arguments set forth in this complaint, Skydance believes it has amply demonstrated that the County, through the actions of its agent and lessee SAA, has violated 49 USC § 47107(a) by failing to comply with at least two of its grant assurances. Accordingly, it requests that the FAA issue an order so finding and requiring the County and SAA to cease and desist from such violations in the future.

Respectfully submitted,



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Dated: April 9, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this date I have caused the executed original and three (3) copies of the foregoing Part 16 Complaint (without exhibits) to be hand-delivered to:

Office of the Chief Counsel
ATTN: FAA Part 16 Airport Proceedings Docket (AGC-610)
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

I further certify that on this date I have placed in United States mail, certified-return receipt requested, true copies of the foregoing Part 16 Complaint addressed to:

Mr. Edward McCall
General Manager
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Sedona, AZ 86336
(w/o exhibits)

Richard Spector, Esq.
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(with exhibits)

DEBBIE SANVILLE

DATED: April 9, 2002